

DECISION

19220
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-203461

DATE: August 24, 1981

MATTER OF: Pascual Maggio

DIGEST:

Protest against invitation for bid's award scheme is untimely under GAO Bid Protest Procedures because alleged impropriety concerns defect on face of solicitation and protest was not filed with GAO prior to bid opening.

Pascual Maggio protests the award of a contract to Penzimer Construction Company, Inc. (Penzimer), under invitation for bids (IFB) No. N62472-80-B-4973 issued by the Navy for certain construction alterations to a building at the Naval Air Engineering Center, Lakehurst, New Jersey. Maggio contends that his bid was the low responsive bid because it is impossible to perform the work covered by item 3 without awarding item 2, which was not awarded. In our view, Maggio's protest is untimely under our Bid Protest Procedures (4 C.F.R. part 21 (1981)) and will not be considered on the merits.

The IFB called for separate prices for items 1, 2, and 3. Item 1 encompassed all the work outlined in the specifications and drawings except the work described in items 2 and 3. Item 2 covered work on the roof, electrical system, sprinkler system, installation of studs and drywall, and second floor walls. Item 3 covered a new heating, ventilation, and air-conditioning system.

The IFB stated that funds available for the project would be recorded prior to bid opening, May 19, 1981. The IFB also stated that the low bidder was to be determined in accord with the "Additive or Deductive Items" clause of the IFB, which reads, in pertinent part, as follows:

[Protest of Navy Contract Award]

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"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made with such funds. * * *"

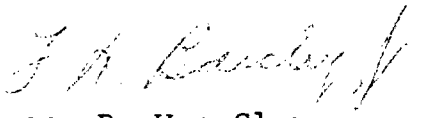
The relevant bids revealed these prices:

	Item 1	Item 2	Item 3
Penzimer	\$52,000	\$62,000	\$14,400
Maggio	50,400	55,500	36,000

Available funding was \$89,400. All bids for items 1 and 2 exceeded available funding, so no award could be made for item 2. The low aggregate bid for items 1 and 3, within available funding, was submitted by Penzimer. Thus, in accord with the IFB's award scheme, award was made to Penzimer for items 1 and 3.

On May 29, 1981, Maggio protested here essentially contending that the IFB's award scheme was improper because the work covered by item 3 could not be accomplished without first awarding item 2.

Protests alleging an impropriety in an IFB, which impropriety is apparent prior to bid opening, as here, must be filed prior to bid opening as provided in our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(1) (1981); Kathryn A. Rogerson, B-202366, March 26, 1981, 81-1 CPD 228. Accordingly, Maggio's protest, filed after bid opening, is untimely and will not be considered on the merits.

For 
Harry R. Van Cleve
Acting General Counsel